



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

WILLIAM PATRICK APPS

Serial No.: 09/785,100

Filed: February 15, 2001

For: NESTABLE DISPLAY CRATE FOR BOTTLE CARRIERS

Attorney Docket No.: RPC 0559 PUS

Group Art Unit: 3727

Examiner: S. Castellano

**APPEAL BRIEF**

Box AF  
Commissioner for Patents  
United States Patent and Trademark Office  
Washington, D.C. 20231

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Sir:

This is an appeal brief from the final rejection of claims 1-51 of the Office Action dated May 27, 2002. This application was filed on February 15, 2001.

**I. REAL PARTY IN INTEREST**

The real party in interest is Rehrig Pacific Company, a corporation having a place of business in Los Angeles, California as set forth in the assignment recorded in the U.S. Patent and Trademark Office on August 29, 1997 at Reel 8705, Frame 0693.

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Name of Person Signing

Signature

## **II. RELATED APPEALS AND INTERFERENCES**

Appellants are unaware of any related appeals and/or interferences which will directly affect or be directly affected by or have a bearing on the Board's decision in the present appeal.

## **III. STATUS OF CLAIMS**

Claims 1-51 (*see* Appendix attached) are pending in this application. The rejection of the claims has been made final. Appellants hereby appeal the rejection of all claims, claims 1-51.

## **IV. STATUS OF AMENDMENTS**

No amendments have been made following the Final Rejection dated May 22, 2002.

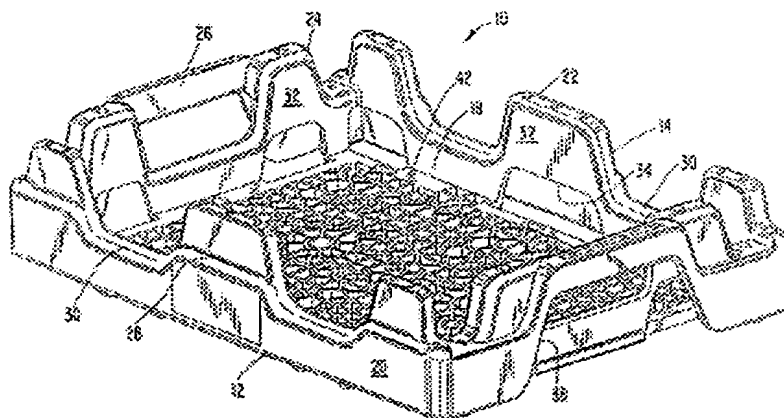
## **V. SUMMARY OF THE INVENTION**

Bottles, particularly for soft drinks and other beverages, are often stored and transported during distribution in crates. These crates generally are configured to be stacked on top of each other when loaded with bottles, and nested together when empty of bottles. The plastic crates provide advantages such as conservation of storage space and efficient, easy handling and recyclability. In order to minimize the storage space of the crates when nested and to reduce cost and weight, many crates today are made with a shallow peripheral sidewall structure. These "low depth" crates are used extensively. Generally, it is desirable to design low depth crates with a wall structure that provides lateral support for the bottles while also allowing the bottles to be visible.

Crates for single serve bottles are customarily stacked on top of each other. One way of handling the loaded crates is to stack the cases on pallets which can be lifted and moved about by fork-lift trucks. A technique for interconnecting loaded crates is called cross-stacking, and is often used to improve stability of a stack of crates for transport or for display purposes by a retailer. An aspect of crate design is to provide the structural features which facilitate handling of stacked and cross-stacked loaded crates to enhance the stability of stacked crates, while providing maximum visibility of the bottles or bottle carrier, especially in a retail setting.

A problem experienced with previous nestable crates has been somewhat limited visibility of the bottle or container labels. The obscured visibility problem has been more pronounced when the bottles are grouped together in a cardboard carrier or otherwise bundled because present crates are not designed to show the labels on the carriers or shrink wrap. There is a need for a nestable display crate for bottle carriers or multi-packs which has improved and structural strength and provides bottle carrier visibility.

According to the embodiment of the invention disclosed, the low depth nestable display crate (10) for bottle carriers (C) has a floor (16) for supporting the bottle carriers and



**FIG. 1**

a wall structure having endwalls and sidewalls extending around the periphery of the floor. A lower wall portion includes an exterior surface (20) along the sidewalls connected to the floor for supporting the carriers. A double thickness upper wall portion (14) has

spaced tooth members (22) extending upward from the lower wall portion which define display openings between the tooth members along the sidewalls sized to reveal labels L on the bottle carriers for displaying the bottle carriers in a loaded crate.

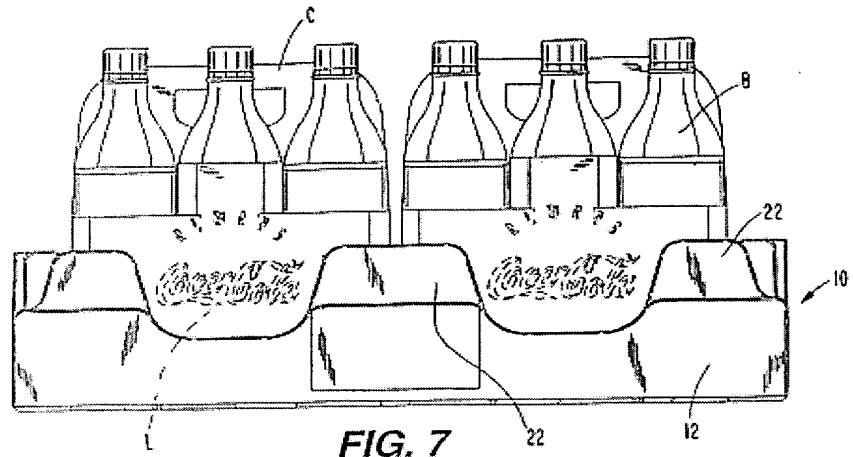


FIG. 7

The spaced tooth members (22) in one embodiment have a trapezoidal shape and an upper edge with at least one rounded portion. The tooth members have an upper portion, and a bottom portion having a relatively greater width than the upper portion. Nesting ribs (23, 25) are provided within at least one of the tooth members to bear against a top surface of a corresponding tooth member in a crate nested therebelow. The tooth members extend above and inwardly from said lower wall portion along the sidewalls to form a shoulder therebetween.

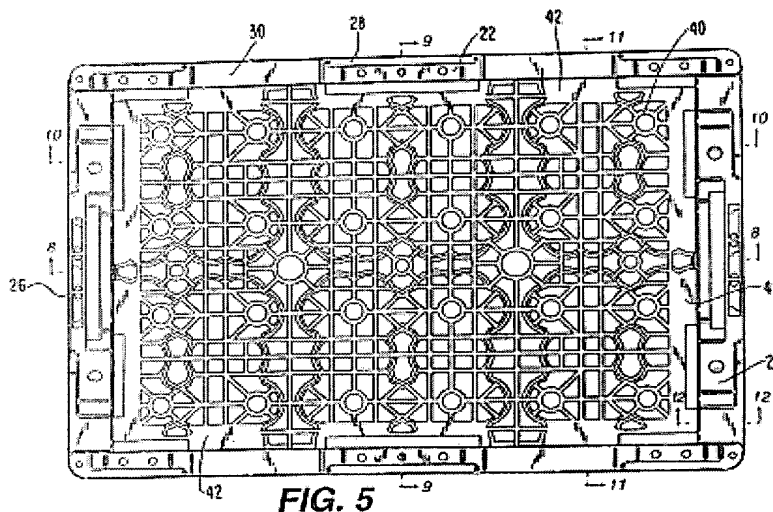


FIG. 5

The tooth members include interior teeth panels (32) which are flat to provide lateral support to the bottle carriers loaded in said crate. The interior teeth panels are generally coplanar with the interior bottle carrier support surfaces (18). There is a cut-out (34) disposed below the interior teeth panels.

A handle bar (26) is integrally molded with the tooth members (22) along the endwalls. The lower wall portion defines a cut-out (38), which provides the handle bar complete clearance below the handle bar, and complete clearance above the handle bar from a stacked crate above, and provides sufficient clearance between the handle bar and the bottle carriers loaded in the crate to enable a user's hand to encircle the handle bar. The sidewall lower wall portion (12) between the spaced tooth members (22) includes an outer wall member having a solid outer surface (20) and an inner surface (18), with the inner surface having a plurality of ribs extending inwardly perpendicular therefrom. Extending between the exterior surface and the interior portions of the lower wall portion is a flat lower wall top surface (30).

## **VI. ISSUES**

The issues, stated succinctly, are as follows:

- Issue A:** Whether the Examiner has erred in rejecting claims 1-51 under 35 U.S.C. § 102(e) as being clearly anticipated by U.S. Patent No. 5,651,461 to Apps et al.;
- Issue B:** Whether the Examiner has erred in rejecting claims 15-19, 21-26, 50 and 51 under 35 U.S.C. § 102(e) as being clearly anticipated by U.S. Patent No. 5,704,482 to Apps et al.; and
- Issue C:** Whether the Examiner has erred in rejecting claims 28-30, 32-39 under 35 U.S.C. 102(b) and/or (e) as being clearly anticipated by U.S. Patent No. 5,465,843 to Koefeldt.

## **VII. GROUPING OF CLAIMS**

The claims do not stand or fall together.

(I) Claims 1, 3-14, 20, 27, 31, 40-49 will be identified as Group I claims and stand or fall together. The group is directed to claims solely rejected on the basis of being anticipated by the '461 reference.

(II) Claim 2 will be identified as Group II claim and will stand or fall by itself. This group is directed to a claim that was solely rejected on the basis of the '461 reference and which has an additional limitation, not shown in the reference, that the interior teeth panels are flat to provide lateral support to bottle carriers loaded in the crate.

(III) Claims 15, 17-19, 21-26, 50 and 51 will be identified as Group III claims and stand or fall together. The group is directed to claims rejected on the alternative bases of being anticipated by the '461 reference or the '482 reference.

(IV) Claim 16 will be identified as Group IV claim and will stand or fall by itself. This group is directed to a claim rejected on the alternative bases of being anticipated by the '461 reference or the '482 reference and which has the additional limitation, not shown in the references, that the tooth members have interior teeth panels which are flat and co-planar with the interior bottle carrier support surfaces.

(V) Claims 28-30, 32, 34-39 will be identified as Group V claims and stand or fall together. The group is directed to claims rejected on the alternative bases of being anticipated by the '461 reference or the '843 reference.

(VI) Claim 33 will be identified as Group VI claim and will stand or fall by itself. The group is directed to a claim rejected on the alternative bases of being anticipated by the '461 reference or the '843 reference and which has the additional limitation, not shown in the references, that the interior teeth panels are flat for providing lateral support to the bottle carriers.

### **VIII. ARGUMENT**

The present invention pertains to crates used to store, transport and display bottle carriers, such as six packs. For marketing purposes, it is often advantageous to allow shoppers to see as much of the six pack graphics as possible. The crates should also be stackable and strong for easy and convenient transportation and storage. Thus, the invention presents a crate that is nestable, has improved and structural strength and provides bottle carrier visibility. The prior art fails to show or suggest such a carrier.

Despite this, the examiner rejected the claims based on three prior patents to the assignee of this application, Rehrig Pacific Company. Although all the claims are restricted to crates for bottle carriers (see, preambles and repeated references to bottle carriers in the bodies of the independent claims 1, 15, 28, 40, 50 and 51), the art relied upon by the examiner as anticipating all the claims were crates for individual bottles, not suitable for bottle carriers. Therefore, it is important to understand the art cited by the examiner.

A. The Prior Art

1. Apps et al. '461

Apps et al. U.S. Patent No. 5,651,461 is a stackable case (10) for retaining and transporting individual bottles (9). Mr. Apps is the inventor on the pending application. This patent and the pending application are both assigned to Rehrig Pacific Company.

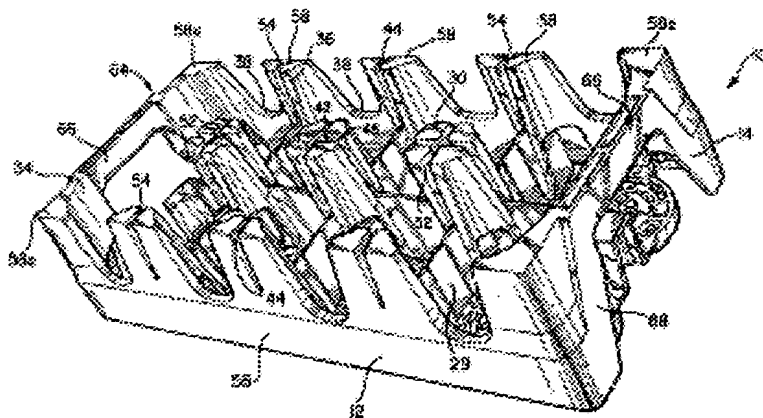


FIG 1

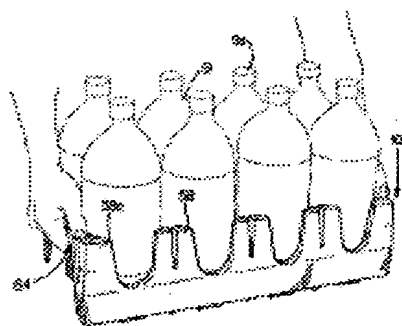


FIG. 14

Each individual bottle (9) is retained within its own corresponding bottle retaining pocket (32). The interior pockets are defined by four separate upwardly projecting columns 30 or pylons 58. The exterior bottle retaining pockets are formed by corner pylons 58a, side pylons 58, and columns 30. Interior walls (29) separate the pockets from one another. (Column 6, line 1 - line 48.)

There is no suggestion that the crate could be used with cartons of bottles. The interior walls, columns, and irregular interior surface of the side walls do to the pylons make such use impossible.

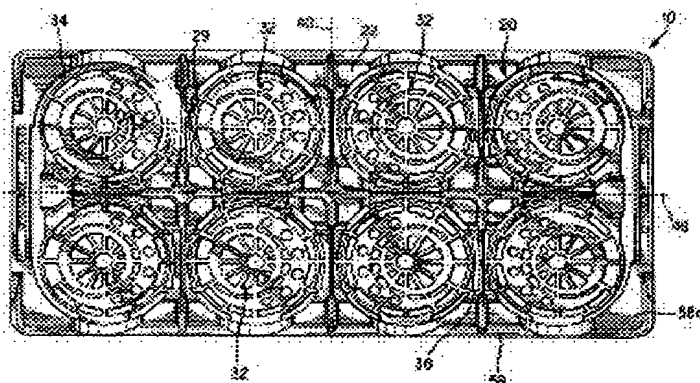
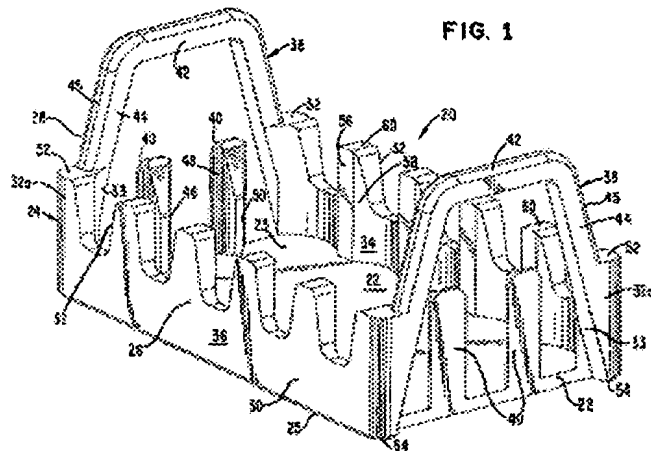
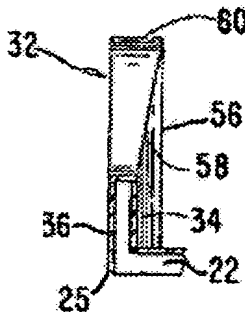


FIG 2



2. Apps et al. '482

Apps et al. U.S. Patent No. 5,704,482 is another stackable case (20) for retaining and transporting individual bottles. This patent is also assigned to Rehrig Pacific Company.

**FIG. 4**

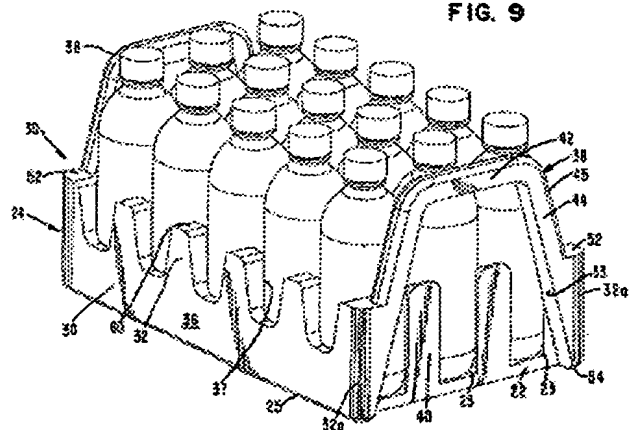
Pylons (32) are regularly

spaced along sidewalls (26). Each pylon includes a center panel (56) which is arranged to protrude between adjacent bottles when the crate (20) is loaded.

See, FIG. 9. Therefore, the center panels 56 are inwardly displaced from the interior surface (34) of the lower wall portion (30). The center panels of adjacent pylons (32) are connected by curved transition portions (58) and the interior surface (34) of the lower wall (30). When the crate (20) is loaded with bottles, the sides of the bottles are supported by curved transition portions 58 to snugly hold the bottles therein. (Column 6, line 31 - line 49.) The crate

retains bottles in relatively close relation so as to prevent jostling during handling. Excess bottles movement is to be avoided in order to ensure that they remain in a vertically upright position to most advantageously bear the load of crates stacked thereabove. (Column 4, line 23 - line 31.)

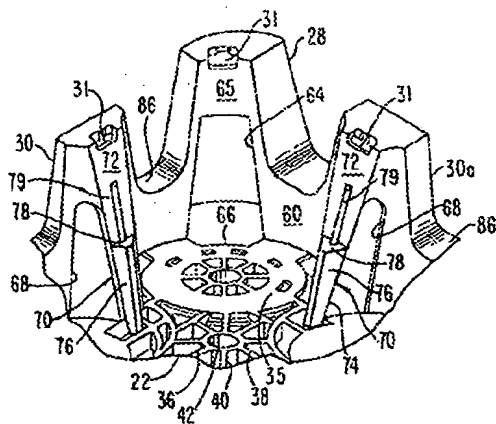
There is no suggestion that the crate could be used with cartons of bottles. Due to the protrusion of the pylons inwardly, such use would be impossible.

**FIG. 9**

### 3. Koefelda '843

Koefelda U.S. Patent No. 5,465,843 is yet another stackable case (20) for retaining and transporting individual

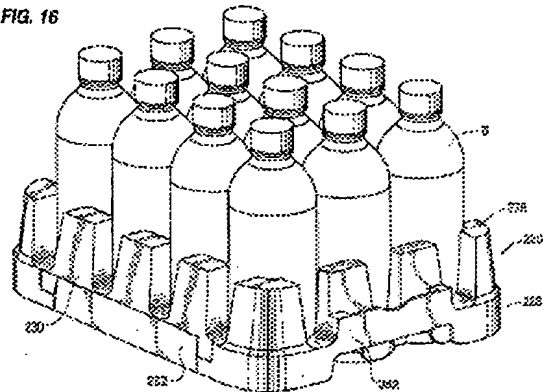
**FIG. 14**



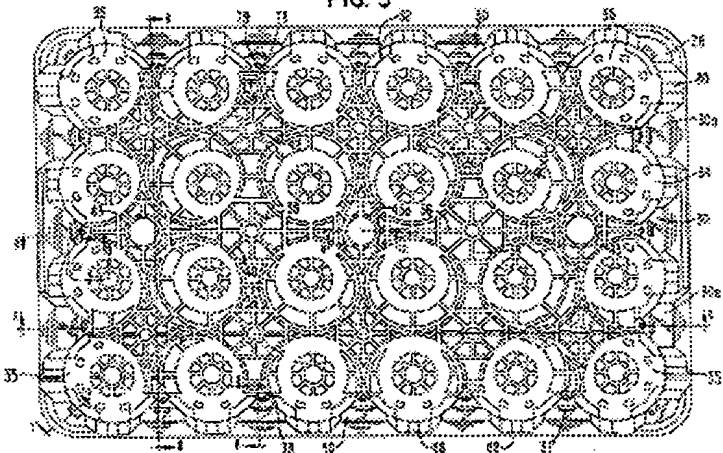
bottles. It is also assigned to Rehrig Pacific Company. The wall structure defines the periphery of crate 20 and comprises a lower wall portion 26 and a plurality of corner pylons 28 and side pylons 30 and 30a. The interior sides of side pylons 30 and 30a have an integral central panel 70. The central panels are preferably angled outwardly from the floor toward the top of the pylons. In this way, central panels 70 will extend somewhat between adjacent bottles when crate 20 is loaded with bottles. (Column 7, line 62 - column 8, line 2.)

There is no suggestion that the crate could be used with bottle cartons. The central panels of the pylons protrude inwardly between the bottles, making such use impossible.

**FIG. 16**



**FIG. 3**



**ISSUE A:** Whether the Examiner has erred in rejecting claims 1-51 under 35 U.S.C. § 102(e) as being clearly anticipated by U.S. Patent No. 5,651,461 to Apps et al.

In the initial Office Action of 10/19/01, the Examiner stated without analysis that “Claims 1-51 are rejected under 35 U.S.C. 102(e) as being anticipated by Apps et al. (‘461).” Applicant traversed this rejection. It was pointed out that Claims 1-51 are directed to a crate for supporting bottle carriers. The ‘461 reference teaches a crate designed to provide stability for individual bottles. For instance, the ‘461 patent includes surfaces 36 and columns 30 extending between adjacent bottles when the crate is loaded with individual bottles. Thus, as shown above, the cited reference does not show a crate suitable for use with bottle carriers. For example, the current application does not have surfaces 36 extending between bottles as shown in the ‘461 reference because they would interfere with the bottle carriers, making it difficult or impossible for them to seat properly.

In contrast to the reference, dependent claim 2 recites interior teeth panels that are flat to provide lateral support to bottle carriers loaded in the crate. No such structure is found in the ‘461 reference.

Moreover, by way of example and not limitation, the following claims are also not disclosed or taught in the ‘461 reference: Claim 16 is directed to the tooth members having interior teeth panels which are flat and co-planar with the interior bottle carrier support

surfaces. Such feature is not disclosed in the '461 reference, and claim 16 is therefore not anticipated by this reference. Claim 22 is directed to the spaced tooth members having an upper edge with at least one rounded portion; claim 27 includes a lower wall portion between spaced tooth members having an outer wall with an inner surface and a plurality of ribs extending inwardly perpendicular therefrom. Such features are not taught in the '461 reference, and claims 22 and 27 are also not anticipated by the '461 patent.

The examiner responded to applicant's arguments by making the rejection final with only the following statement:

Applicant's arguments filed April 30, 2002 have been fully considered but they are not persuasive. Applicant states that the crate is intended for supporting bottle carriers and that the references provide support only for individual bottles rather than bottle carriers. The same surfaces that can support the individual bottles are just as capable of supporting bottle carriers."

No such surfaces are identified by the examiner. The only supporting bottles surfaces in the '461 patent for are found in single bottle supporting pockets separated by walls and columns. (*See, e.g.*, column 6 lines 7-27, Figures 1 and 2). Thus, they cannot support carriers, which have multiple bottles. Further, the Examiner ignored Applicant's individual claim specific arguments. Thus, the Examiner's unsupported argument should be rejected.

Accordingly, Applicant the claims 1-51 are patentably distinguished over the '461 reference and not anticipated.

**ISSUE B:** Whether the Examiner has erred in rejecting claims 15-19, 21-26, 50 and 51 under 35 U.S.C. § 102(e) as being clearly anticipated by U.S. Patent No. 5,704,482 to Apps et al.

Claims 15-19, 21-26, 50 and 51 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 5,704,482 to Apps et al (the '482 patent). As with the other rejections, this was summarily stated in the first Office Action with no further explanation other than the statement in the final rejection quoted above.

Applicant traversed this rejection also. Like the rejection above, these claims are directed to a crate for supporting bottle carriers and sidewall lower wall portions having "interior *bottle carrier* support surfaces." Such features are not disclosed in the '482 patent and thus the rejected claims are not anticipated thereby. To the contrary, the '482 reference teaches individual bottle support surfaces on pylons that protrude into the interior of the crate, preventing its use for carriers.

Also, Claim 16 is directed to the tooth members having interior teeth panels which are flat and co-planar with the interior bottle carrier support surfaces. Such feature is not disclosed in the '482 patent, and claim 16 is therefore not anticipated by this reference. This feature was not addressed by the Examiner.

Accordingly, Applicant these claims are patentably distinguished over the cited reference and not anticipated.

**ISSUE C:** Whether the Examiner has erred in rejecting claims 28-30, 32-39 under 35 U.S.C. 102(b) and/or (e) as being clearly anticipated by U.S. Patent No. 5,465,843 to Koefeldt.

Claims 28-30 and 32-39 are rejected under 35 U.S.C. 102(b) and/or (e) as being anticipated by U.S. Patent No. 5,465,843 to Koefeldt. As with the other rejections, this was summarily stated in the first Office Action with no further explanation other than the statement in the final rejection quoted above.

Applicant traversed this rejection also. Like the rejections above, these claims are directed to a crate for supporting bottle carriers and sidewall lower wall portions having "interior *bottle carrier* support surfaces." Such features are not disclosed in the '843 patent and thus the rejected claims are not anticipated thereby. Again, use with bottle carriers is impossible. The protrusion of the central panels of the pylons inwardly is allowed due to the space between individual bottles, but would conflict with the carriers.

Further, Claims 28-30 and 32-39 do not include many other limitations of the present claim. For example, independent claim 28 as amended includes a handle bar which

may be encircled by a user. Such feature is not disclosed in the '843 patent. Further, by way of example, claim 33 is directed to interior teeth panels which are flat for providing lateral support to the bottle carriers. Central panel 70 of the '843 patent does not provide such lateral support. Accordingly claim 28 and dependent claims 29-30 and 32-39 are not anticipated by this reference. None of these additional limitations were ever specifically addressed by the Examiner.

Accordingly, Applicant believes that these claims are parentally distinguished over the cited reference and not anticipated.

**IX. CONCLUSION**

For the reasons discussed above, Applicants believe the recited rejections of claims 1-51 under U.S.C. 102(b) and/or (e) are in error. Thus, reversal is respectfully requested.

A check in the amount of \$320.00 is enclosed to cover the appeal fee under the provisions of 37 C.F.R. § 1.17(c). Please charge any additional fee or credit any overpayment in connection with this filing to our Deposit Account No. 02-3978.

Respectfully submitted,

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Registration No. 29,048  
Attorney for Applicant

Date: January 31, 2003

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*Enclosure - Appendix*